

## **CHAPTER 45-03-21 DEMUTUALIZATION**

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**45-03-21-01. Definitions.** For the purposes of this chapter, the following definitions shall apply:

1. "Commissioner" means the insurance commissioner.
2. "Converted insurer" means a domestic mutual insurer that has completed a demutualization subject to this chapter.
3. "Converting insurer" means a domestic mutual insurer that has filed, or announced its intent to file, an application for demutualization under this chapter.
4. "Demutualization" means any transaction as part of which:
  - a. A domestic mutual insurer is converted into a stock corporation;
  - b. A substantial portion of the ownership of a domestic mutual insurer is acquired by, or merged with, another entity that is not a mutual insurer; or
  - c. The ownership interest of the members in a domestic mutual insurer is reduced substantially or eliminated.
5. "Eligible member" means a person who, at any time during the one year preceding the record date, has been the owner of a policy of insurance issued by the converting insurer. Unless otherwise provided in the conversion plan and approved by the commissioner, a person insured under a certificate issued under a group policy is an eligible member.

6. "Equitable share" means the portion allocated to an eligible member of the securities or other consideration of the converting insurer referred to in subsection 3 of section 45-03-21-05, such allocation to be made in accordance with the provisions of subsection 4 of section 45-03-21-05.
7. "Member" means a person who is the holder of a policy or contract of insurance issued by the converting insurer, including the holder of a certificate issued under a group insurance policy. The term "member" does not include a dependent of a certificate holder or policyholder who is insured by the converting insurer solely by virtue of being such a dependent nor does it include the holder of a contract issued by the converting insurer under which there is not a substantial assumption of risk, such as a contract for administrative services only.
8. "Membership interest" means all rights to which members of the converting insurer are entitled under applicable law and under the converting insurer's bylaws, articles of incorporation, insurance policies, or other contracts, including the right to vote and to participate in any distribution of earnings or surplus, whether or not incident to the company's dissolution or liquidation.
9. "Mutual insurance holding company" means a company formed under North Dakota Century Code section 26.1-12.1-02.
10. "Plan of conversion" or "conversion plan" means a plan to engage or participate in a demutualization which is subject to this chapter.
11. "Record date" means the date on which the converting insurer's board of directors adopts a plan of conversion or some other date specified as the record date in the plan of conversion and approved by the commissioner.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-02. Authority to convert.** A domestic mutual insurer authorized to do business in this state may not take part in a demutualization unless the demutualization has first been approved by the commissioner in accordance with this chapter. Any domestic mutual insurer may submit to the commissioner a petition to engage in a demutualization without reincorporation, pursuant to the requirements of this chapter. This chapter does not apply to a reorganization of a mutual insurer into a mutual holding company structure, pursuant to North Dakota Century Code chapter 26.1-12.1.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-03. Board of directors approval.** A plan of conversion under this chapter must be adopted by no less than a majority of the board of directors of the converting insurer unless otherwise provided in the articles of incorporation or bylaws.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-04. Petition to convert.** A petition to engage in a demutualization pursuant to this chapter must be filed with the commissioner and must contain the following:

1. The proposed plan of conversion;
2. The proposed articles of incorporation and bylaws of the converted insurer;
3. A list of the proposed officers and directors of the converted insurer, stating each of those individual's principal occupation, all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years and specifying any other relationship that will exist between such individual and the converting insurer;
4. A narrative explanation of the reasons for, and purposes of, the proposed demutualization, including an analysis of alternative transactions considered;
5. A description and analysis of the anticipated risks and benefits for the converting insurer associated with the proposed demutualization;
6. A description and analysis of the anticipated risks and benefits for the insureds, eligible members, and other members of the converting insurer associated with the proposed demutualization;
7. An explanation of the anticipated effect of the demutualization on the profitability, solvency, and market position of the converting insurer;
8. An explanation of the anticipated tax implications of the proposed demutualization for the converting insurer and whether the demutualization would constitute a taxable event for its eligible members, insureds, and other members;
9. An explanation of the anticipated effect of the demutualization on insurance coverages provided by the converting insurer, including the anticipated effect on the scope and costs of such coverages;

10. The resolution of the board of directors of the converting insurer authorizing the demutualization, certified by the secretary of the company;
11. Pro forma financial statements for the converted insurer, projecting its financial condition for the three years immediately following the demutualization;
12. The proposed plan of operation for the converted insurer;
13. A summary of the plan of conversion and any other materials that the converting insurer proposes to send to members and eligible members to seek their approval of the conversion plan;
14. The proposed form of notice required pursuant to section 45-03-21-07 to members must include a reasonable description of all material terms of the conversion plan in order that the members may make an informed decision as to whether or not to vote in favor of approval of such conversion plan. Such notice must also be sent to eligible members in order that they may make an informed decision as to whether or not to participate in the hearing. The information provided to members and eligible members in accordance with this section must also include a fair and adequate description of all risks and potential adverse consequences that may arise from the demutualization; and
15. Such additional information as the commissioner reasonably deems necessary to assure that the plan complies with the standards set forth in section 45-03-21-07.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-05. Elements of the conversion plan.** Any plan of conversion filed pursuant to this chapter must include at least all of the following:

1. Identification of the membership interests held or owned by the members of the converting insurer;
2. Identification of the class or classes of persons who have an ownership interest in the converting insurer as of the record date. If an ownership interest is held by any person who is not as of the record date an eligible member, the conversion plan must determine what percentage of the ownership interest in the converting insurer is held by eligible members in the aggregate, and what percentage of the ownership interest is held by each of any other classes of persons and by any other entity who holds such interest, such determinations to be made as of the record date;

3. A fair and reasonable formula, approved by the commissioner, for exchanging the equitable share of each eligible member for securities or other consideration, or both, of the converted insurer and the disposition of any unclaimed shares. Each eligible member must be entitled to receive in exchange for the eligible member's equitable share, without additional payment, consideration payable in voting common shares of the converted insurer or other consideration, or both. If the equitable share of the eligible member entitles the eligible member to receive a fractional share of stock, the eligible member must have the option to receive the value of the fractional share in cash or to purchase a full share by paying the balance in cash;
4. The allocation of the consideration mentioned in subsection 3 must take into account:
  - a. The value of the voting rights of each eligible member, if any;
  - b. The estimated proportionate contribution of each class of participating policies and contracts of insurance to the aggregate consideration being given to eligible members; and
  - c. Such other factors that the commissioner finds must be included in order for the allocation to be fair and equitable to eligible members and other owners;
5. If the conversion plan of the converting insurer includes or contemplates a public or private offering of stock or other securities of the converted insurer:
  - a. The number and characteristics of each class or type of share or other security to be authorized;
  - b. The maximum percentage of issued or outstanding stock or other securities to be sold;
  - c. A detailed description of the company's proposed capital structure;
  - d. The proposed method and timing of any such sale;
  - e. The anticipated effect of such sale on the value of the consideration distributed to eligible members in accordance with the conversion plan and this chapter; and
  - f. A description of how the board of directors anticipates eligible members would be treated in any such sale, including a description of any plans for initial sale of stock or other securities to third parties, the process to be used in offering the stock or other

securities, and setting the initial sale price for the stock or other securities;

6. The manner in which the conversion plan, when completed, would provide for the converted insurer paid-in capital and surplus in an amount not less than the minimum paid-in capital and surplus required of a domestic stock insurer upon initial authorization to transact like kinds of insurance; and
7. A description of any plans by the converting insurer to provide any stock options or other financial incentives to any member of management or any director as part of, or following, the demutualization.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-06. Appointment of experts.** The commissioner may retain, at the converting insurer's expense, such qualified experts or advisors as the commissioner deems reasonably necessary to assist in the review of the conversion plan and the determination of the value of the converting insurer on the record date.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-07. Hearing.** The commissioner shall conduct a public hearing regarding a proposed demutualization within ninety days after submission of a complete petition to the commissioner. Notice of the hearing must be published in five newspapers, one of which must be a daily newspaper published at Bismarck, at least two weeks before the hearing on the petition. Notice shall be mailed by the converting insurer to each member and eligible member, accompanied by a copy of the plan of conversion, at least forty-five days prior to the hearing. At the hearing, the converting insurer, its members, eligible members, and any other person whose interests may be affected by the proposed conversion may present evidence, examine or cross-examine witnesses, and offer oral and written arguments and comments to the extent permitted by, and according to the procedure for adjudicative proceedings under, North Dakota Century Code chapter 28-32. The commissioner may approve the conversion of the plan if the commissioner finds the following:

1. The conversion plan is fair and equitable to the converting insurer, its members, and its eligible members;
2. The conversion plan does not violate the law;
3. The converted insurer, after the demutualization, will be able to satisfy the requirements for the issuance of a certificate of authority to write

the line or lines of insurance for which it was licensed before the demutualization;

4. Upon demutualization, the paid-in capital and surplus of the converted insurer must be in an amount not less than the minimum paid-in capital and surplus required to organize a domestic stock insurance company;
5. The rights of every member in any policy of insurance of the converting insurer, excluding voting and dividend rights, if any, may not be adversely affected by the demutualization and must continue in full force in accordance with the terms of the policy of each such member;
6. The financial condition of the converted insurer would not be such as might jeopardize its financial stability or prejudice the interest of its policyholders and members;
7. The demutualization will not affect adversely access to health care by persons covered by any health insurance policies or contracts issued by the converting insurer;
8. The demutualization is not likely to be hazardous or prejudicial to the interests of the members, the insureds, or the public; and
9. A conversion plan affecting a nonprofit insurer or holding company makes adequate provision for the interest of the public in such insurer or holding company.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-08. Action by commissioner.** Within ninety days after the conclusion of the public hearing, the commissioner shall enter an order either approving, conditionally approving, or disapproving the plan. An approval or conditional approval of a conversion plan expires if the demutualization is not completed within one hundred eighty days after the approval or conditional approval unless the time for completion is extended at the commissioner's discretion. An order approving, or approving conditionally, a conversion plan under this chapter does not apply to a demutualization that becomes effective more than thirty days after the date of such order unless no later than five days prior to the date on which the demutualization shall become effective, but in no event any earlier than ten days before such date, the converting insurer shall file with the commissioner the following certifications:

1. A certification that all opinions, private letter rulings, revenue rulings, and other such matters relating to the material tax consequences of the demutualization remain in full force, true and correct as of the anticipated effective date except as expressly and fully noted in the certification.

2. A certification that there have been no material changes in the converting insurer's financial condition which would have a significant effect on any of the matters contained in the conversion plan or in the notices provided to members and eligible members pursuant to section 45-03-21-07.
3. If the commissioner's order recites any factual bases for approval, or for conditional approval, a certification that no such factual bases have changed materially since the date of the order.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-09. Member approval.** Following the commissioner's order, the plan of conversion and the proposed amendments to the articles of incorporation must be submitted to vote of the converting insurer's members and must be approved by an affirmative vote of a majority of votes cast by no fewer than twenty-five percent of the converting insurer's members, who may vote in person or by proxy at a meeting held for that purpose. The meeting may be a regular or special meeting but must be held no earlier than ninety days before the effective date. Following the commissioner's approval, notice of a meeting for the purpose of voting on the plan and amendments must be provided by mail to each member entitled to vote in accordance with the articles of incorporation or bylaws of the converting insurer no earlier than ninety days and no later than thirty days before the date of the meeting. Each member entitled to vote may cast one vote unless provided otherwise in the articles of incorporation or bylaws of the converting insurer.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-10. Consideration for promoting conversion prohibited.** A director, officer, or employee of the converting insurer may not receive any fee, commission, or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting, or assisting in the demutualization except as set forth in the conversion plan approved by the commissioner. This provision may not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, actuaries, and other consultants for services performed in the independent practice of their professions, even though they may also be directors of the converting insurer.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-11. Directors and officers.** The directors and officers of the converting insurer shall serve the converted insurer until new directors and officers



are elected and qualify pursuant to the articles of incorporation and bylaws of the converted insurer.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-12. Stock acquisition - Limitations.** The converted insurer may not, for at least three years following the demutualization, repurchase any of its common shares except pursuant to a pro rata tender offer to all shareholders.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-13. Action after demutualization.** An administrative action or proceeding, pending at the time of the demutualization to which the converting insurer may be a party, may not be abated or discontinued by reason of such demutualization.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-14. Amendment.** A petition to engage in a demutualization filed pursuant to section 45-03-21-02 or a conversion plan governed by this chapter may be amended after it is first filed with the commissioner and is subject to the following provisions:

1. If the amendment is made after approval from the commissioner pursuant to section 45-03-21-08 but prior to member approval pursuant to section 45-03-21-09 and if the commissioner determines that the amendment will not affect adversely and materially the interest of the converting insurer or its members, the amendment must be approved in the same manner as the conversion plan in accordance with section 45-03-21-09.
2. If the amendment is made prior to approval by the commissioner pursuant to section 45-03-21-08 and after notice to members has been mailed, an amended notice is not required to be mailed to members if the commissioner determines that the amendment will not adversely and materially affect the interest of the converting insurer or its members.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32

**45-03-21-15. Competitive purpose.** A person or entity licensed or holding a certificate of authority to transact the business of insurance in the state of North Dakota may not use the possibility that a domestic mutual insurer may demutualize as an inducement to the sale of insurance or for any other competitive purposes.

**History:** Effective February 1, 2000.

**General Authority:** NDCC 26.1-12-32

**Law Implemented:** NDCC 26.1-12-32